

Decision 05-03-033 March 21, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application by

AMERICATEL CORPORATION
D/B/A 1010 123 AMERICATEL (U-5918-C),
AND ALMENDRAL, S.A.
For Authority To Transfer Control of an
Authorized Telecommunications Carrier.

Application 05-01-030
(Filed January 28, 2005)

OPINION GRANTING REQUEST FOR TRANSFER OF CONTROL

I. Summary

This decision grants the application of Americatel Corporation and Almendral, S.A. pursuant to Pub. Util. Code § 854 for a transfer of control of Americatel, a telecommunications carrier authorized to operate in California, to Almendral.

II. Parties to the Transaction

Americatel's current parent corporation is a Chilean corporation named Empresa Nacional de Telecomunicaciones, S.A. (ENTEL Chile). Telecom Italia International N.V. currently holds a controlling interest in ENTEL Chile. Almendral is acquiring Telecom Italia's interest in ENTEL Chile, and with it control of Americatel.

In Decision (D.) 97-12-128, we granted Americatel a certificate of public convenience and necessity (CPCN) to be a switchless reseller¹ of inter-Local

¹ In the application, Americatel stated it also had limited facilities-based authority. Americatel's counsel has since corrected the record (see Appendix A to this decision) to note that Americatel is only a reseller. Our records confirm this clarification. This

Access and Transport Area (LATA) telecommunications services, and, to the extent authorized by D.94-09-065,² intra-LATA telecommunications services offered by communication common carriers in California. Americatel is authorized to do business in California by the California Secretary of State. The Federal Communications Commission (FCC) has granted Americatel authority to provide interstate and international services and intrastate long distance services throughout the contiguous United States.

Americatel currently offers international and domestic long distance services, including dial around casual calling (1010XXX service), presubscribed 1+ calling, and prepaid calling card services. Americatel's current headquarters is 4045 NW 97th Avenue, Miami, Florida 33178, telephone (305) 717-0200.

Almendral is a publicly held corporation incorporated under the laws of the nation of Chile. It is headquartered in Santiago, Chile. Its contact information is Almendral S.A., Isidora Goyenechea 3642, Piso 4, Las Condes, Santiago, Chile, telephone 011 (562) 334-4815.

III. Proposed Transaction

Almendral will acquire a 54.76 percent voting interest in ENTEL Chile from Telecom Italia. As a result, Almendral will hold a controlling interest in Americatel. The transaction will occur at the holding company level and will not result in any transfer or assignment of the operating authority held by Americatel, movement of Americatel's customers, or change in Americatel's name, rates, terms or conditions. Americatel's existing management and technical team will continue to manage its own day-to-day operations in the United States. Thus, the change will not be apparent to Americatel's customers.

decision does not grant Almendral or Americatel the right to provide telecommunications service other than that already granted Americatel in D.97-12-128.

² D.94-09-065 is generally known as our Implementation Rate Design (IRD) decision.

The applicants represent that the transaction “will serve the public interest by permitting Americatel to continue to offer its existing services and providing Americatel with access to additional resources that will allow Americatel to better assess and implement its business strategies going forward.” Application at 8.

Applicants assert that the transaction must close on March 25, 2005. However, the application was not filed until January 28, 2005, and applicants initially provided Almendral’s financial information in Chilean currency (without information on the exchange rate), and Almendral’s annual report and accountants’ financial certification in Spanish without translation. We caution the firms representing applicants, and applicants themselves, that it is unreasonable to expect the Commission to act on an expedited schedule with this type of inadequate information. Materials essential to an application – including financial information – should always be translated into English and presented in American currency. Applicants provided translated information by supplements to its application filed on February 1, 2005 and February 22, 2005. Thus, applicants made it difficult for the Commission to meet the March 25, 2005 deadline.

IV. Discussion

Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require.

Where a company without a CPCN seeks to acquire control of a company that does possess a CPCN, we apply our CPCN requirements to the acquirer. The Commission has established two major criteria for determining whether to

grant a CPCN. An applicant who desires to operate as a resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Almendral's financial statements for 2003 and through September 30, 2004, translated into U.S. dollars in the Second Supplement to Application filed February 22, 2005, demonstrate that the company has sufficient resources to meet our financial requirements. As a condition of the granting of this application, within 30 days of the effective date of this decision, Almendral shall furnish paperwork to the Administrative Law Judge and the Commission's Telecommunications division, 505 Van Ness Avenue, 3rd Floor, San Francisco, CA 94102 (Attention: Joseph McIlvain) certifying that it has deposited – or already has on deposit – at least \$25,000 in a FDIC-insured U.S. bank account.

Since Americatel will continue to operate under the same management, we find that our requirement for technical expertise is satisfied. Moreover, Almendral will retain Juan Jose Mac Auliffe on its board after the transaction. Mac Auliffe was a director of ENTEL Chile for a number of years. While having one board member with prior experience would not be enough if Americatel were not retaining its current management, the addition of Mac Auliffe does appear to add value.

Furthermore, Almendral certifies that neither the company nor its affiliates/officers/directors have been investigated or sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule or order. It declares that the same individuals and entities have not filed for bankruptcy or been found criminally or civilly liable for violation of Cal. Business and Professions Code § 17000 *et seq.* or for any actions involving

misrepresentation to consumers. It certifies it is not currently under investigation for similar violations. Application at 9-10. Finally, Almendral certifies that no slamming and/or cramming or other telecommunications-related complaint proceedings have been filed against Almendral within the last 10 years before any U.S. state regulatory commission, the FCC, the U.S. Securities and Exchange Commission or any Chilean regulatory agency. Second Supplement to Application, Exhibit 1.

The transaction will improve Americatel's access to capital. In addition, it will be transparent to customers. As discussed above, Almendral has satisfied our financial and experience requirements. The proposed transaction is in the public interest, and we therefore grant the application.

The Executive Director may grant noncontroversial applications by nondominant telecommunications carriers to transfer assets or control.³

V. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

VI. Categorization and Need for Hearings

In Resolution ALJ 176-3147, dated February 10, 2005, the Commission preliminarily categorized this proceeding as Ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, the Commission concludes that a public hearing is not necessary; thus, the preliminary determinations in ALJ 176-3147 will not be altered.

VII. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge (ALJ) in this proceeding.

³ *Re Crico Telecommunications of San Jose*, D.87-10-035, 1987 Cal. PUC LEXIS 283; *Re California Associations of Long Distance Telephone Companies*, D.86-08-057, 1986 Cal. PUC LEXIS 786.

Findings of Fact

1. In D.97-12-128, the Commission granted a CPCN to Americatel to operate as a switchless reseller of inter-LATA telephone service, and, to the extent authorized by D.94-09-065, intra-LATA telecommunications services offered by communication common carriers in California.

2. As a result of the transaction proposed in this application, Almendral will acquire a controlling interest in ENTEL Chile and consequently a controlling interest in Americatel.

3. There will be no change in the name or management of Americatel as a result of the transaction.

4. Americatel's customers will continue to receive service under the same rates, terms, and conditions after the transaction.

5. Provided it meets the \$25,000 deposit requirement set forth herein, Almendral has sufficient financial resources to meet the Commission's requirements to provide resold local exchange and interexchange services.

6. So long as it continues with current Americatel management, Almendral possesses the necessary technical expertise required by the Commission.

7. Almendral has not committed any civil, criminal or regulatory violation that militates against granting this application.

8. There were no protests to this application.

Conclusions of Law

1. The Commission applies the same requirements to a request for approval of an agreement to acquire control of a resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. Provided it meets the \$25,000 deposit requirement set forth herein, Almendral meets the Commission's requirements for the issuance of a CPCN to provide resold local exchange and interexchange telecommunications services.

3. The transaction is in the public interest.
4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.
5. As a condition of the granting of this application, within 30 days of the effective date of this decision, Almendral should file and serve on the ALJ and the Commission's Telecommunications division (Attention: Joseph McIlvain) documentation certifying that it has deposited – or already has on deposit – at least \$25,000 in a FDIC-insured U.S. bank account.
6. Materials essential to an application – including financial information – should always be translated into English and presented in American currency.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code § 854, the joint application of Americatel Corporation and Almendral, S.A. for approval of the transfer of control of Americatel to Almendral is approved.
2. As a condition of the granting of this application, within 30 days of the effective date of this decision, Almendral shall file and serve on the Administrative Law Judge for this proceeding and the Commission's Telecommunications division, 505 Van Ness Avenue, 3rd Floor, San Francisco, CA 94102 (Attention: Joseph McIlvain) documentation certifying that Almendral has deposited – or already has on deposit – at least \$25,000 in a FDIC-insured U.S. bank account.
3. This decision does not grant Almendral or Americatel the right to provide telecommunications service other than that already granted Americatel in Decision 97-12-128.
4. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.

5. Application 05-01-030 is closed.

This order is effective today.

Dated March 21, 2005, at San Francisco, California.

/s/ STEVE LARSON

STEVE LARSON
Executive Director